

HOUSE No. 3950

By Mr. Petruccelli of Boston, petition of Anthony Petruccelli and others (with the approval of the mayor and city council) that the city of Boston be authorized to regulate the rents of certain governmentally-involved housing units. Housing.

The Commonwealth of Massachusetts

PETITION OF:

Anthony Petruccelli
Thomas M. Menino
Michael F. Rush

Willie Mae Allen
Elizabeth A. Malia
Martin J. Walsh

In the Year Two Thousand and Seven.

AN ACT TO RESTORE BOSTON'S GOVERNMENTALLY INVOLVED HOUSING PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Whereas*, a serious public emergency exists with
2 respect to the housing of citizens in Boston residing in governmen-
3 tally-involved housing, inasmuch as there is a threat that many low-
4 income individuals and families residing in such housing,
5 particularly those elderly and disabled, may be threatened with dis-
6 placement as a result of prepayment of mortgage financing, loss of
7 use restrictions, expiring subsidy contracts, and expected increases
8 in rent, and there is a threat that affordable housing stock will be lost
9 due to expiration of use restrictions and subsidy contracts and such
10 pre-payment, further exacerbating an extreme housing shortage
11 within the city for low-income families and voters, and whereas , in
12 approving Chapter 40 P of the General Laws, the voters did not
13 exempt such housing from protection or regulation and whereas it is
14 the city's policy to encourage owners of this governmentally-
15 involved housing to accept incentives to keep such housing afford-
16 able and avert displacement, that such emergency should be met by
17 the city of Boston immediately;
18 *Therefore*, this act is declared to be in the public interest.

1 SECTION 2. (A) Notwithstanding the provisions of any general
2 or special law to the contrary, including, without limitation, the pro-
3 visions of chapter forty P of the General Laws and chapter 282 of
4 the Acts of nineteen hundred and ninety-four, for so long as the City
5 Council of Boston shall determine that the circumstances described
6 in section one hereof continue to exist, the City of Boston shall by
7 ordinance regulate the rent for the use or occupancy of governmen-
8 tally-involved or formerly governmentally-involved housing to the
9 extent such regulation is not preempted by federal law or by section
10 six of chapter 708 of the Acts of nineteen hundred and sixty-six as
11 amended, once the basis for federal or state rent regulation or pre-
12 emption no longer exists. For purposes of this act, “governmentally-
13 involved housing” is defined as housing units which the United
14 States, the Commonwealth or any authority created under the laws
15 thereof (i) insures the mortgage thereon, or owns, operates, finances,
16 or subsidizes such housing units, and (ii) regulates the individual
17 rents thereof, including without limitation housing units constructed
18 or rehabilitated pursuant to Section 202 of the Housing Act of 1959,
19 as amended (12 U.S.C. § 1701q), Sections 221 (d) and 236 of the
20 National Housing Act, as amended (12 U.S.C. § § 17151(d) or
21 1715z-1), Section 811 of the Cranston-Gonzalez National Affordable
22 Housing Act, as amended (42 U.S.C. § 8013), or Section 13A of
23 chapter 708 of the Acts of nineteen hundred and sixty-six, added by
24 Section 10 of chapter 855 of the Acts of nineteen hundred and
25 seventy, as amended (M.G.L. c. 23A App. §1-13A), or housing units
26 financed or subsidized pursuant to project-based programs for low-
27 income persons under Section 8 of the United States Housing Act of
28 1937, as amended (42 U.S.C. § 1437f), or the project-based Massa-
29 chusetts Rental Voucher Program, so-called (see line item 7004-
30 9004 of Section 2 of chapter 159 of the Acts of two thousand, as
31 well as 760 C.M.R. Part 49.00), or housing units with mortgage
32 insurance under Sections 207 or 220 of the National Housing Act, as
33 amended, and subject to a rent regulatory agreement or other con-
34 trols pursuant to applicable law with the Boston Redevelopment
35 Authority, but not including the following:—

36 (1) housing units owned or acquired by the City of Boston
37 through tax foreclosure;

38 (2) except for publicly owned dwelling units or units which are
39 financed or subsidized with project-based Section 8, housing units in

40 a one-to-four family building or structure which are not part of a
41 larger housing development, whether on one or more sites;

42 (3) structures containing housing units subsidized with mobile
43 tenant-based rental assistance that would not otherwise come within
44 the definition of governmentally-involved housing;

45 (4) public housing owned or operated by a local housing authority
46 under chapter 121B of the General Laws, the United States Housing
47 Act of 1937 (42 U.S.C. § § 14S7a et seq.), or any successor act or
48 public housing programs formerly assisted under the United States
49 Housing Act of 1937;

50 (5) housing units which received mortgage insurance pursuant to
51 sections 207 or 220 of the National Housing Act but not subject to a
52 rent regulatory agreement or other controls with the Boston Redevel-
53 opment Authority as well as housing units which received mortgage
54 insurance pursuant to section 608 of the National Housing Act,
55 regardless of whether there was a rent regulatory agreement or other
56 controls with the Boston Redevelopment Authority or not;

57 (6) housing units which received mortgage insurance pursuant to
58 Section 221(d) of the National Housing Act and which never
59 received a federal or state subsidy or below market interest rate
60 mortgage subsidy; and

61 (7) housing units where the sole government involvement is the
62 owner's participation in federal, state, or municipal funded programs
63 for home repairs, energy conservation, or lead paint abatement.

64 For the purpose of this act, "formerly governmentally-involved
65 housing" is defined as housing which was governmentally-involved
66 housing as of July 1, 1994, or which becomes governmentally
67 involved housing after July 1, 1994, but which then no longer is
68 owned, operated, financed, subsidized, mortgage-insured, or rent-
69 regulated by the United States, the Commonwealth, or any authority
70 created under the laws thereof, provided that "formerly governmen-
71 tally involved housing" shall include any housing receiving subsidy
72 under Section 8(t) of the United States Housing Act of 1937 (42
73 U.S.C. § 1437f(t)).

74 For the purpose of this act, "low-income" is defined as annual
75 household income which is eighty per cent or less of the median
76 income for the area as determined by the United States Department
77 of Housing and Urban Development, with adjustments for smaller
78 and larger families.

79 The City of Boston shall by ordinance create a official body des-
80 ignated by the Mayor to establish as the maximum rent for the gov-
81 ernmentally-involved and formerly governmentally-involved
82 housing units the rent in effect, therefore on July 1, 1994, or six
83 months before the basis federal or state rent regulation or preemption
84 lapsed, whichever is later, adjusted to insure such rent provides a fair
85 net operating income as of the date of the official's body's decision,
86 provided, however, said ordinance shall authorize the official body
87 to make individual adjustments in such maximum rents as may be
88 necessary to remove hardships or to correct other inequities, the offi-
89 cial body shall observe the principle of maintaining maximum rents
90 for such housing units at levels which will yield to owners a fair net
91 operating income from such housing units. In determining whether
92 the maximum rent for such housing units yields a fair net operating
93 income, due consideration shall be given to, among other relevant
94 factors; (1) increases in property taxes; (2) unavoidable increases in
95 operating and maintenance expenses; (3) major capital improvement
96 of the housing units, distinguished from ordinary repair, replace-
97 ment, and maintenance; (4) increases or decreases in living space,
98 services, furniture, furnishings or equipment; and (5) substantial
99 deterioration of the housing units, other than ordinary wear and tear,
100 or failure to perform ordinary repair, replacement, or maintenance.

101 (B) Such ordinance shall provide that no person shall bring an
102 action to recover possession of a governmentally-involved housing
103 unit, or of a formerly governmentally involved housing unit, to the
104 extent that such regulation is not otherwise preempted by federal law
105 or section six of chapter 708 of the acts of nineteen hundred and
106 sixty-six as amended, unless:—

107 (1) the tenant has failed to pay the rent to which the owner is enti-
108 tled;

109 (2) the tenant has violated an obligation or covenant of tenancy
110 not inconsistent with Chapter 93A of the General Laws or this act
111 other than the obligation to surrender possession upon proper notice,
112 and has failed to cure the violation after having received written
113 notice thereof;

114 (3) the tenant is causing, committing, or permitting a nuisance in,
115 or substantial damage to the housing unit, or is creating substantial
116 interference with the comfort, safety, or enjoyment of the owner or
117 other occupants of the same or any adjacent unit;

118 (4) the tenant has used or permitted use of a housing unit for
119 illegal purposes;

120 (5) the tenant, who had a written lease or rental agreement which
121 has terminated, has refused, after written requests or demand by the
122 owner, to execute a written extension or renewal thereof for a farther
123 term of like duration on terms not inconsistent with or violative of
124 any provision of this act;

125 (6) the tenant has refused the owner reasonable access to the
126 housing unit for the purpose of making necessary repairs or
127 improvements required by law, or for the purpose of inspection as
128 permitted or required by the lease or law, or for the purpose of
129 showing the housing unit to any prospective purchaser or mortgagee;

130 (7) the tenant holding at the end of a lease term is a subtenant not
131 approved by the owner; or

132 (8) the owner seeks to recover possession for any other just cause
133 not in conflict with the provisions and purposes of this act or chapter
134 93A of the General Laws.

135 The provisions of this section shall be construed as additional
136 restrictions on the right to recover possession of such housing units.

137 (C) Such ordinance shall also provide that no person shall remove
138 any governmentally-involved or formally governmentally-involved
139 housing accommodation from low-income rental housing use
140 (including but not limited to sale, lease, or other disposition of the
141 property which may have such an effect), or convert such property to
142 a condominium or cooperative, without first obtaining a permit for
143 that purpose from the official body, to the extent that such provision
144 is not preempted by federal law or section six of chapter 708 of the
145 acts of nineteen hundred and sixty-six as amended. Such permit may
146 be subject to terms and conditions not inconsistent with the purposes
147 and provisions of this act, including, without limitation, (a) incen-
148 tives to continue in effect the low-income restrictions previously in
149 place for the property and (b) where sale, lease, or disposition of the
150 property may result in the loss of all or a portion of the property for
151 low-income rental housing use, the right of an incorporated tenants
152 association in such housing, the city of Boston, the Boston Housing
153 Authority, non-profit community development corporations, or other
154 equivalent bona fide non-profit organizations to negotiate for,
155 acquire and operate such property on substantially equivalent terms

156 and conditions as offered or available to a bona fide third-party pur-
157 chaser.

158 (D) To the extent not preempted by federal law or section six of
159 chapter 708 of the acts of nineteen hundred and sixty-six as
160 amended, such ordinance shall require that owners of governmen-
161 tally-involved housing, or formerly governmentally involved
162 housing, affirmatively seek out and accept any prospective govern-
163 mental housing resources, whether tenant-based or project-based,
164 which maximize affordability of the housing units consistent with
165 the income character of the property and the owner a right to obtain
166 a fair net operating income for the housing units, provided that the
167 City shall assist owners by identifying such governmental housing
168 resources.

169 (E) To the extent not preempted by federal law or section six of
170 chapter 708 of the acts of nineteen hundred and sixty-six as
171 amended, and so long as such regulation is consistent with the own-
172 er's right to obtain a fair net operating income, such ordinance shall
173 also provide that the City may establish local preferences, priorities,
174 and income limits for admission to governmentally-involved
175 housing or former governmentally-involved housing upon unit
176 turnover, consistent, to the extent with the income profile of the
177 property twelve months prior to the date of the loss or rent preemp-
178 tion or the decision to not renew an expiring subsidy contract. The
179 official body may approve an alternative plan requested by the
180 owner, consistent with the provisions of this Act. No ordinance or
181 regulation shall require an owner to create a tenancy involving any
182 person with a history of conduct which would, if repeated, be
183 grounds for eviction from such housing.

184 Such ordinance shall also provide that the official body may grant
185 exemptions and exceptions to the general provisions of this act when
186 such action would tend to maintain or increase the supply of afford-
187 able housing in Boston, including, without limitation, promoting the
188 sale of properties to bona fide tenant organizations or non-profit
189 community development corporations under terms and conditions
190 which would tend to maintain the income character of the property.

191 (F) Such ordinance shall provide that the official body may pro-
192 mulgate such rules, regulations and orders as it may deem necessary
193 to effectuate the purposes of this act and the ordinance. The official
194 body may hold hearings on any matters within its authority under

195 this act and ordinance. Any hearings regarding matters related to
196 regulation of rents or removal permits for governmentally involved
197 or formerly governmentally involved housing or regarding compli-
198 ance with other provisions of this act, or the ordinance, orders, rules,
199 or regulations adopted or promulgated hereunder, shall be conducted
201 by the official body in accordance with the provisions of section
202 eleven of chapter thirty A of the General Laws except that require-
203 ments (7) and (8) of such section eleven shall not apply to such hear-
204 ings.

205 (G) All decisions of the crucial body may be appealed to the
206 housing court department of the trial court, city of Boston division,
207 by any person aggrieved thereby, whether or not previously a party
208 in the matter, within thirty calendar days after notice of such deci-
209 sion. Judicial review of adjudicatory decisions shall be conducted in
210 accordance with section fourteen of chapter thirty A to the General
211 Laws. Judicial review of regulations shall be conducted in accor-
212 dance with section seven of chapter thirty A of the General Laws.
213 The housing court department of the trial court, city of Boston divi-
214 sion, shall have jurisdiction to enforce the provisions hereof and any
215 ordinance, rule or regulation adopted hereunder, and on application
216 of the official body or any aggrieved person may restrain or enjoin
217 violations of any such ordinance, rule, or regulation. In the interests
218 of justice, the court may allow any necessary parties to be joined in
219 or to intervene in any action brought hereunder and may in its dis-
220 cretion allow or require an action to proceed as a class action.

1 SECTION 3. It shall be unlawful for any person to do or omit to
2 do any action in violation of this act, or any order, ordinance, rule or
3 regulation adopted or promulgated hereunder. Whoever willfully
4 violates any provision of this act or any order, ordinance, rule or reg-
5 ulation adopted or promulgated hereunder or whoever makes a false
6 statement in any testimony before the official body or its agents, or
7 whoever knowingly supplies the official body with false information
8 shall be punished by a fine of not more than four hundred dollars or
9 by imprisonment for not more than ninety days, or both; provided,
10 however, that in the case of a second or subsequent offense, or where
11 the violation continues after notice thereof, such person shall be pun-
12 ished by a fine of not more than two thousand dollars, or by impris-
13 onment for not more than one year, or both.

1 SECTION 4. The provisions of this act are severable, and if any
2 of its provisions shall be held unconstitutional or otherwise invalid
3 by any court of competent jurisdiction, the decision of such court
4 shall not affect or impair any of the remaining provisions.

1 SECTION 5. The provisions of M.G.L. c. 40P shall not apply to
2 any ordinance adopted under this authority.

1 SECTION 6. This act shall take effect upon passage.